IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 11.07.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM

and

The Hon'ble Mr. Justice V.DHANAPALAN

Habeas Corpus Petition No.429 of 2006

P.Rajamani ... Petitioner

Vs.

1.The Secretary to Government,
Government of Tamil Nadu
Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The District Magistrate and
District Collector,
Salem District,
Salem. .. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records pertaining to the detenu Mani @ Manivannan, who is detained under Tamil Nadu Act 14 of 1982` as Goonda at Central Prison, Salem by the second respondent vide roder in C.M.P.No.5/Goonda/C2/2006 dated 09.02.2006 on the file of the second respondent herein, quash the same and direct the respondents herein to produce the body of the detenu and set him at liberty.

For Petitioner : Mr.G.Vijayakumar

For Respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, who is the mother of the detenu by name Mani @ Manivannan, who is detained as a ''Goonda" as contemplated under Section 3 (1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum

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Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 09.02.2006, challenges the same in this Petition.

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner, by drawing our attention to the details stated in paragraph 3 of the grounds of detention, submitted that though a specific reference has been made to Karipatti Police Station Crime No.410/2003 and Attur Police Station Crime No.468/2004, the detenu was not supplied with the material, which vitiates the ultimate order of detention. In this regard, it is relevant to refer the actual passage where the detaining authority has referred to all the adverse cases including the above said two crime numbers, which reads as under:

> "During investigation it was found that the above persons were involved in Yethapur Police Station Crime No.371/2005, Karippatty P.S.Cr.No.410/2003, 92/2004, Veeranam P.S.Cr.No.271/2005, Attur P.S.Cr.No.468/2004 also apart from the ground case."

4. It is the definite case of the petitioner that no materials, not even a copy of the First Information Report relating to Karipatty Police Station Crime No.410/2003 and Attur Police Station Crime No.468/2004 were supplied to the detenu. No doubt, learned Additional Public prosecutor brought to our notice that in the affidavit filed by the sponsoring authority, there is a reference to those crime numbers. It is not in dispute that the particulars furnished in the affidavit are meant for the detaining authority for taking decision. Merely because there is a reference in the affidavit, the detenu is not going to get any assistance in defending his case. Inasmuch as, the detaining authority has heavily relied on all the adverse cases including Crime No.410/2003 and 468/2004 on the file of the Karipatty Police Station and Attur Police Station respectively, we are of the view that it is but proper on the part of the detaining authority to supply materials relating to those crime numbers to the detenu in order to give him an opportunity to putforth his representation effectively. On this ground, we are of the view that the detention order is liable to be interfered.

5. In addition to the same, the learned counsel appearing for the petitioner, by drawing our attention to para 5 of the grounds of detention, has submitted that though the detaining authority has stated that in the adverse cases the detenu had filed bail applications and bail was granted, on the date when the detention order was passed viz., on 09.02.2006, no order has been passed. The learned counsel for the petitioner also pointed out that the detaining authority has not furnished any bail order except making a general statement. Inasmuch as the detaining authority has very much relied on those materials as found in paragraphs 3 and 5, by drawing our attention to the latest decision of

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the Supreme Court reported in (2006) 2 Supreme Court Cases(Criminal) 90 (SUNILA JAIN VS. UNION OF INDIA AND ANOTHER), the learned counsel appearing for the petitioner contended that non furnishing of those details to the detenu would vitiate the ultimate order of detention. While considering the similar contention, the conclusion of Their Lordships in paragraph 12, which are relevant is as follows:

> "The question as to whether an offence is bailable or not is not a vital fact whereupon an order of bail can be passed. Application of mind to the averments made in a bail application may be relevant where the grounds stated therein reveal certain facts which are vital for passing an order of detention. In a case of such nature, it may be said that the application for bail was necessary to be placed before the detaining authority and non-furnishing a copy thereof to the detenu would vitiate the order of detention."

6. In the light of the legal position as stated above and in view of the infirmity in paragraphs 3 and 5 of the detention order as explained above, we are of the view that the detention order cannot be sustained. In these circumstances, the detention order is liable to be quashed and accordingly, the same is quashed.

4. The Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Secretary to Government, State of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai-600 009.

2.The District Magistrate and District Collector, Salem District, Salem.

3. The Superintendent, Central Prison, Salem.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

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5. The Public Prosecutor, High Court, Madras.

+ 1 CC To Mr. G.Vijayakumar, Advocate SR NO. 30273

HCP. No.429 of 2006

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